

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

CARANA, INC., D/B/A/ CARMEN
CHIRINO BOUTIQUE,

Plaintiff,

v.

JOVANI FASHION, LTD., et al.,

Defendants.

Civil No. 07-2230 (JAF)

OPINION AND ORDER

Plaintiff, Carana, Inc., d/b/a/ Carmen Chirino Boutique , brings this diversity action against Defendants, Jovani Fashions, Ltd. ("Jovani"); Abraham Maslavi, Maslavi's wife and their conjugal partnership (the "Maslavi Defendants"); and unknown individuals, insurance companies, and corporations. Docket No. 1. Plaintiff seeks damages for violations of Puerto Rico law arising from the alleged termination of a distribution relationship. Id. Defendants move for a transfer of venue to the Southern District of New York pursuant to 28 U.S.C. § 1404(a). Docket No. 12. The Maslavi Defendants also move to dismiss the complaint for failure to state a claim against them pursuant to Federal Rule of Civil Procedure 12(b)(6). Docket No. 11.

I.

Factual and Procedural Synopsis

We derive the following relevant facts from the parties' filings. Docket Nos. 1, 10, 12, 14. In deciding Defendants' motion

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1 to dismiss, we assume all the allegations in Plaintiff's complaint,
2 Docket No. 1, to be true and make all reasonable inferences in its
3 favor. Alternative Energy, Inc. v. St. Paul Fire & Marine Ins.,
4 Co., 267 F.3d 30, 36 (1st Cir. 2001).

5 Plaintiff is a clothing boutique located in Puerto Rico.
6 Jovani, incorporated and with its principal place of business in
7 New York, designs and manufactures high-end women's formalwear.
8 Maslavi is the president of Jovani. Jovani entered into an
9 agreement with Plaintiff, whereby Jovani would sell its products
10 to Plaintiff to the exclusion of all other buyers or distributors
11 in Puerto Rico. Jovani terminated the sales agreement in May 2007
12 and offered to continue in a non-exclusive sales arrangement with
13 Plaintiff thereafter. Plaintiff alleges that during the course of
14 the exclusive sales arrangement, Defendants sold Jovani products
15 to Plaintiff's competitors in Puerto Rico, and thereafter
16 terminated the agreement without just cause.

17 Plaintiff filed the present complaint in the District of
18 Puerto Rico on December 26, 2007. Docket No. 1. Jovani filed a
19 complaint for breach of contract under New York law in the Supreme
20 Court of New York, County of New York, on January 18, 2008. See
21 Jovani, Ltd. v. Carana, Inc., No. 08-2985 (S.D.N.Y. filed March 24,
22 2008). Carana removed the New York case to the United States
23 District Court for the Southern District of New York on March 24,
24 2008. Id. On May 9, 2008, Carana moved to transfer the New York
25 case to the District of Puerto Rico; this motion was denied without

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1 prejudice and the issue appears to remain pending before that
2 court, subject to discovery. See id. The Maslavi Defendants moved
3 to dismiss on May 16, 2008. Docket No. 11. That motion is
4 unopposed. All Defendants brought the present motion to transfer
5 venue on June 11, 2008, Docket No. 12. Plaintiff opposed the
6 transfer of venue on June 20, 2008. Docket No. 14.

7 II.

8 Motion to Transfer Venue

9 Defendants argue that venue should be transferred to the
10 Southern District of New York pursuant to 28 U.S.C. § 1404(a).
11 Docket No. 12.

12 Under § 1404(a), we may "transfer any civil action to any
13 other district or division where it might have been brought" for
14 "the convenience of [the] parties and witnesses." 28 U.S.C. §
15 1404(a). "In addition to the convenience of parties and witnesses,
16 the factors to be considered by the court include the availability
17 of documents; the possibility of consolidation; and the order in
18 which the district court obtained jurisdiction." Coady v. Ashcraft
19 & Gerel, 223 F.3d 1, 11 (1st Cir. 2000) (citing Cianbro Corp. v.
20 Curran-Lavoie, Inc., 814 F.2d 7, 11 (1st Cir. 1987)). When
21 "identical actions are proceeding concurrently in two federal
22 courts," a court should generally give preference to the venue of
23 the action filed first. Id.; accord TPM Holdings, Inc. v. Intra-
24 Gold Indus., Inc., 91 F.3d 1, 4 (1st Cir. 1996) ("Where the overlap
25 between the two suits is nearly complete, the usual practice is for

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1 the court that first had jurisdiction to resolve the issues and the
2 other court to defer."). Because there is a strong presumption in
3 favor of the plaintiff's forum choice, the burden of proof on these
4 factors rests with the party seeking transfer. Coady, 223 F.3d at
5 11 (citing Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 508 (1947)).

6 Defendants have failed to meet their burden of proof on this
7 issue. The thrust of Defendants' argument is that Defendants have
8 no interests in Puerto Rico and would be inconvenienced by
9 litigation in Puerto Rico by having to hire counsel here and travel
10 here. See Docket No. 12. However, Defendants made themselves
11 subject to suit in Puerto Rico by entering into a sales agreement
12 with a Puerto Rican business. Moreover, Defendants have not
13 identified any documents or non-party witnesses that would be
14 unavailable in Puerto Rico. Finally, and perhaps most importantly,
15 we note the existence of the nearly identical suit currently
16 pending in the Southern District of New York, which involves the
17 same parties and the same underlying sales agreement. See Jovani,
18 Ltd. v. Carana, Inc., No. 08-2985 (S.D.N.Y. filed March 24, 2008).
19 That action was filed after the present action; the District of
20 Puerto Rico is, thus, the preferred venue based on order of filing.
21 See Coady, 223 F.3d at 11; TPM Holdings, 91 F.3d at 4. Defendants
22 have presented no other reasons for us to disturb Plaintiff's
23 choice of forum. Accordingly, we deny Defendants' motion to
24 transfer venue, Docket No. 12.

25 **III.**

1 **Motion to Dismiss**

2 The Maslavi Defendants move to dismiss the complaint for
3 Plaintiff's failure to state a claim against Maslavi in his
4 personal capacity, Maslavi's wife, and their conjugal partnership.
5 Docket No. 11. The motion is unopposed.

6 Pursuant to Federal Rule of Civil Procedure 12(b)(6), a
7 defendant may move to dismiss an action against him, based solely
8 on the pleadings, for the plaintiff's "failure to state a claim
9 upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). Under
10 our liberal pleading standards, a plaintiff must set forth "a short
11 and plain statement of the claim showing that the pleader is
12 entitled to relief," Fed. R. Civ. P. 8(a)(2), and need only give
13 the respondent fair notice of the nature of the claim and
14 petitioner's basis for it. Swierkiewicz v. Sorema N.A., 534 U.S.
15 506, 512-15 (2002). We note that, in order to survive a motion to
16 dismiss, a plaintiff must allege facts that demonstrate "a
17 plausible entitlement to relief." Rodríguez-Ortiz v. Margo Caribe,
18 Inc., 490 F.3d 92, 95 (1st Cir. 2007) (citing Bell Atl. Corp. v.
19 Twombly, 550 U.S. 544, 127 S. Ct. 1955, 1967 (2007)).

20 In addition to Jovani, the complaint names Maslavi as a
21 defendant in both his personal capacity and his official capacity
22 as Jovani's president. Docket No. 1. The complaint also names
23 Maslavi's wife and their conjugal partnership. Id. The Maslavi
24 Defendants assert that Plaintiff has failed to allege any facts
25 entitling it to relief from Maslavi in his personal capacity,

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1 Maslavi's wife, or their conjugal partnership. Docket No. 12.
2 However, the complaint explicitly alleges facts indicating that all
3 Defendants are responsible for the breach and resulting damages.
4 See Docket No. 1. Furthermore, the Maslavi Defendants point us to
5 no rule foreclosing the potential liability of Maslavi in his
6 personal capacity, Maslavi's wife, and their conjugal partnership
7 in the context of Plaintiff's claims. See Docket No. 12. The
8 Maslavi Defendants may revisit these issues at the summary judgment
9 stage, if appropriate, once the parties have had the benefit of
10 discovery. Given the Federal Rules' liberal pleading standards,
11 however, we find that dismissal is inappropriate at this time.

12 **IV.**

13 **Conclusion**

14 For the foregoing reasons, we **DENY** Defendants' motion to
15 transfer venue, Docket No. 12, and **DENY** the Maslavi Defendants'
16 motion to dismiss, Docket No. 11.

17 **IT IS SO ORDERED.**

18 San Juan, Puerto Rico, this 5th day of February, 2009.

19 s/José Antonio Fusté
20 JOSE ANTONIO FUSTE
21 Chief U.S. District Judge